

Minutes
PLANNING BOARD
August 1, 2006

MEMBERS PRESENT: Chair Matthew Farrelly, Neil Jones, Paul Newton, Eric Oliver, Dave Remington, and Toby Vandemark.

ABSENT: Jim Boericke, Edna Ellis, Tom Campanella, and Barrie Wallace; absence excused.

STAFF: Margaret Hawth and Bob Hornik.

ITEM #1: Call to Order and Confirmation of a Quorum.

Mr. Farrelly called the meeting to order at 7:04 p.m. and confirmed the quorum.

ITEM #2: Adoption of Minutes.

MOTION: Mr. Newton made a motion that the minutes of the June 26, 2006 Planning Board meeting be adopted.

SECOND: Mr. Jones.

VOTE: Unanimously approved.

ITEM #3: Additions to the Agenda and Agenda Adjustment.

MOTION: Mr. Newton moved to postpone discussion on Items #4, Committee Reports, and Item #8, the Churton Street Corridor Plan.

SECOND: Mr. Newton.

VOTE: Unanimously approved.

ITEM #4: Committee Reports and Updates. Postponed to the September meeting.

ITEM #5: Consideration of extending Preliminary Plan approval for Willowbend subdivision for six months.

Mr. Farrelly noted that the actual request was to extend preliminary plan approval. Ms. Hawth provided a brief overview of the issue, and called the Board's attention to the letter from the developer contained in the packet.

Mr. Oliver asked if they had to have the preliminary plan completed, or was it the fact that they needed to turn in a final plat before the two-year time limit was up. Ms. Hawth said they needed to turn in a final plat, which meant that the entire infrastructure was complete or they had submitted a bond for the price of the outstanding infrastructure. Mr. Oliver said then they could have submitted a bond rather than ask for the extension. Ms. Hawth said there was the issue of the bond running for a year, which might not have been acceptable to the developer.

Mr. Oliver asked if the final plat had to be approved or only submitted by the time limit. Ms. Hawth said submitted only, noting it required a staff approval

MOTION: Mr. Newton moved to extend the preliminary plan approval for the Willowbend subdivision for six months.

SECOND: Mr. Remington.

DISCUSSION: Mr. Oliver asked how many extensions were allowed. Ms. Hawth said there could be successive extensions, but she was not aware of a limit on the number. Mr. Oliver said

then the developer would have to make another request to the Board to extend it further. Ms. Hawth said that was correct. Mr. Hornik said no limitation was provided in the Ordinance or the Code regarding the number of extension a person could ask for. He said it was at the discretion of the Board.

VOTE: Unanimously approved.

ITEM #6: Recommendation to the Town Board regarding Walters' rezoning request.

Ms. Hawth provided an overview and reminded the Board of the discussion that had taken place on July 25. She said there had been a valid Protest Petition submitted, which represented more than 5% of the property area as required. Ms. Hawth said there was some question regarding the map submitted by the applicant, noting there appeared there might be some discrepancy between the Town's zoning map and the applicant's map. She said the question regarded some implication that the road carried some zoning. Ms. Hawth said it was a public easement but not necessary a dedicated right-of-way that had been accepted by NCDOT, so that implied from looking at the Land Records that that land was still owned by the person who owned the property, and therefore would carry a zoning.

Ms. Hawth said this was an unusual circumstances and not often seen. She said she had included the Goals and Objectives section of the Vision 2010 Plan and an excerpt from the new Planning legislation 106A-383, which stated the Board had to offer a recommendation or statement to the Town Board for all new rezoning actions.

Mr. Oliver said Highland Loop was basically a gravel road. He asked if that was used by the US Postal service to deliver mail. She said she did not know. Mr. Oliver stated there were a couple of houses off of that loop, and asked if the Town or the County patrolled that road. Ms. Hawth said she believed the County did since it was outside the Town's limits. She said the deed that called out the easement said that it was dedicated for public use, but it was never specifically dedicated to the NCDOT. Mr. Oliver said he had visited the site and there were no signs indicating it was a private road, so it was considered a public right-of-way in that anyone could drive down the road. Ms. Hawth said that was correct. She said the property owners that abutted the road maintain it at their expense, since the NCDOT did not.

Mr. Hornik said Ms. Hawth's point was that fee title to the property had never been surrendered to the State or to any other entity. He said with most subdivisions the roads were dedicated or conveyed to the Town, but that was not the circumstance here. Mr. Hornik said you have an easement created by deed that benefited the public generally, but the fee title to the property had never been conveyed out to any public entity.

Mr. Oliver said in 1992 this had come before the Board and was turned down and asked if there was a record of why. Ms. Hawth said it was her recollection that it was because of opposition from the neighborhood.

Mr. Newton said then with the exception of this one parcel that had requested rezoning, the surrounding parcels were already zoned Commercial. Ms. Hawth said that depended on what was meant by surrounded. Mr. Newton said the property on the other side of the road were zoned Commercial. Ms. Hawth said that was correct.

Mr. Oliver said having driven the site and visited Highland Loop Road, that on the Walters' side there was a ditch that the length of the property that further separated it away from the area zoned Commercial on the opposite side. He said it seemed to be a clear separation to him, with no connection between the two. Mr. Oliver said he saw that this property had much more to do with the residential aspect of the area than the commercial. He said he saw the roads as the boundary for the Commercial.

Mr. Newton provided copies of the Vision 2010 Plan map and said the request is consistent with that Plan. Mr. Oliver said that the Plan seemed to dictate retail activity on that particular parcel, so that rezoning did appear to be consistent with the 2010 Plan based on the Land Use Map. Mr. Newton added that some of the membership on that Vision 2010 Plan committee actually lived on St. Mary's Road.

Mr. Farrelly asked whether "retail activity" was the same as General Commercial area. Ms. Hauth noted that General Commercial zoning included retail. Mr. Farrelly said since we had no zoning that was strictly for retail the designation could be interpreted as vague with respect to all the uses that were permitted under General Commercial. Mr. Hornik said he wanted to remind the Board that what this Board and the Town Board were suppose to be considering with respect to requests to rezoning property to a General Use district was the suitability of a particular property for all of the uses that were permitted in that district. Mr. Hornik stated that if the Town Board rezoned it to General Commercial, then any one of the uses allowed under that zoning could possibly be placed on this property, so that was something that had to be considered.

Mr. Farrelly said that the General Commercial district also stated that normal standards would be used to assure the absence of adverse impacts beyond the zoning district boundary. He said it was hard to reconcile all of those things because, for instance, a dry cleaners was one of the listed uses, so if a property were zoned General Commercial there would be a necessary consideration regarding the chemicals that were used. He said it might be determined that a dry cleaners carried an adverse health impact. Mr. Farrelly said it would seem superficial on some level, but at the same time it was an impact. Mr. Hornik stated he believed we could go down the list of uses and imagine such a use on the site with the associated impacts, to help get an idea as to whether this particular piece of property was suitable for such uses.

Mr. Farrelly said he could not imagine the traffic flow, and asked with people coming off of US 70, how would they turn into the site. He said if a restaurant were placed there it could generate high volume during rush hours. Mr. Farrelly said anything like that which could generate a high volume of traffic would not be pleasant. He mentioned that noise might also be an issue for neighbors.

Mr. Remington said it was possible that a convenience store might be placed there, although a service station would require a Conditional Use permit with Board of Adjustment approval. Ms. Hauth said that process was not as flexible as a Special Use Permit, but was not as tightly drawn as a site plan.

Mr. Farrelly said the terminology of the Vision 2010 Plan was not consistent with zoning, so that was one vagary. He said the other was he wondered how closely people inspected each lot with regard to the Plan. Mr. Hornik said he was sensing some discomfort by the Board as to the possible uses of this property. He said the Board's recommendation to the Town Board could contain a statement such as according to the Vision 2010 Plan, this intersection was designated as a retail activity area, however when we look at the list of uses allowed in a General Commercial district and consider the suitability of the property for each and every use allowed, then we are concerned about these particular uses. Mr. Hornik said that could be the basis for a recommendation that the General Commercial district was not appropriate for this parcel.

Mr. Oliver agreed that when retail was used as a description in the Vision 2010 Plan that was too narrow. He said they should have used terminology and descriptions in keeping with the Zoning Ordinance, and in this case this description was too narrow for what the zoning might be on this particular parcel. Mr. Oliver said he believed this parcel needed to remain residential, since many of the possible uses could seriously disturb the neighborhood. Mr. Farrelly said he felt the same, noting there were too many possibilities of incompatible uses should it be rezoned.

Mr. Remington said we were basing our thoughts on the character of what was adjacent to it now, but if some of the other property that was already zoned General Commercial had more typical uses on it like a dry cleaners or a restaurant, then this piece of property would lose its value. The members discussed the adjacent property and its potential use and access.

Mr. Newton said he found the rezoning request to be consistent with the surrounding property. He said this area would have commercial and retail development at some point. Mr. Jones noted his discomfort with the "retail activity" terminology.

MOTION: Mr. Oliver moved that the rezoning request for the 1.67 acres at 430 St. Mary's Road be denied. He said the property was more consistent with the residential area in which it currently resided and abuts, and there would be negative impact on the residential area should it be rezoned to allow retail uses. Mr. Oliver said that even though the Vision 2010 Plan map indicated that this area was to be retail, the General Commercial zoning was too broad and had uses that would have negative impacts on the area.

SECOND: Mr. Remington.

DISCUSSION: A question was asked regarding intended uses of the property. Mr. Hornik responded that if the applicant came back at a later time with a plan in place for the parcel's use, then it was possible a Special Use or Conditional Use might be granted. Ms. Hauth added that if they came in for an Entranceway Special Use zone then the Board would tie the request to their specific proposal. She said that meant they did have an alternative. Ms. Hauth added that there was another zoning district, Neighborhood Business, that was much more limited. She said while it had retail in it, it only contained about ten permitted uses.

VOTE: The vote was 5-1, with Mr. Newton voting Nay.

ITEM #7: **Recommendation to the Town Board regarding Old 86 Zoning and Master Plan request.**

Mr. Farrelly said that several of the Board members had not been present when this had first come before the Board, and asked if the applicant should provide a thumbnail overview. Ms. Hauth said there was no new information provided by the applicant at the last hearing. She said by the next meeting the Board would have minutes from both public hearings to refer to.

Mr. Farrelly suggested the Board have some limited dialogue. Mr. Oliver said currently the parcel was two lots, and wanted to make it three lots that would allow them to sell any one of the three lots. He said the request was for annexation, then rezoning with a Master Plan. He said if we annexed and rezoned, then the applicant could sell any one of those three lots at any time. Ms. Hauth said the Master Plan did provide in broad strokes what could be developed, but they would still have to go through the Special Use Permit process. She said our ordinance also provided that if someone requested a Special Use Permit that was not consistent with the Master and the Board went ahead and approved it, then the Master Plan was considered to be amended.

Mr. Hornik said essentially this request was for a Special Use rezoning, and though the applicant had not provided us with what they envision the site, if the Town Board were approve this then they might propose some conditions on the Master Plan. He said he was concerned that they were using impervious surface in Lot 2 to allow the building in Lot 1. He said if they were to sell lot 1, they could not use that impervious surface in Lot 2 to cover Lot 1, and then it be sold.

Mr. Hornik clarified that the Section 160A-383 statement that was required for the recommendation to the Town Board was regarding the zoning, not the annexation. Ms. Hauth said this Board did not have a formal role to plan in the annexation, but they could make a recommendation they choose to. Mr. Hornik said this Board could ignore the entire annexation part of this, since by Statute that was purely a legislative decision that did not require any recommendation from this or any other Board in order for the Town Board to act on it. He said that was not to say that if the Board thought it was relevant as far as its consideration of the entire project that they could not say something about the annexation as well. Mr. Hornik said but, what the Board was suppose to be focusing on was the land use aspects of the proposal and not whether or not it because a part of the Town or not. Mr. Farrelly said this Board was an advisory board, so he believed they could give advice on any thing they chose to.

Mr. Newton said if you looked at our currently approved Comprehensive Plan, that looked like a portion of what was being asked for was considered to be mixed use non-residential, and the part north of the creek was considered to be mixed use residential. But, he said, on the Strategic Growth Plan Committee, they did not have any kind of formal document but did have four drafts of scenarios, and in three of those scenarios it appeared that the portion north of the creek was considered to be an area for new development. He said he believed that was worth noting. Mr. Newton passed around scenarios maps the consultants are using for the Strategic Growth Plan.

Mr. Hornik asked if those three scenarios forecast a use. Mr. Newton said they only stated that they were areas for new development. He said he guess based on the Committee's creative thinking exercises was that commercial development was the

choice, not residential. Mr. Newton said he believed one of the scenarios would be reviewed later this month.

Mr. Farrelly wondered if it would be more useful to get into this in more detail after the Board had an opportunity to see the minutes from both minutes. Mr. Oliver said it was important for the applicant to hear any concerns that the Board might have, so that those issues could be address at the next meeting. He said it was more important that more than just the six of us cast opinions on this, so hopefully we would have a better attendance at the next meeting.

Mr. Oliver said he was concerned that this parcel would be split into three lots and sold to separate people, and anything that the Master Plan said we would have no control over. He said he was concerned that any restrictions they placed on the lots, such as complying with CPTED restrictions, might not be carried over to the new owners. Ms. Hauth said regarding the imperious surface that was part of the flexibility that this district allowed, to transfer the development intensity across the parcels. She said the Boards were then charged with determining if that was appropriate. Ms. Hauth said the impervious surface limit in this district was 50% and they met that, but do they meet that on an individual parcel. She said the answer was no, not necessarily, but that was one of the issues that came with this increased flexibility.

Mr. Remington said he had a concern about the building on Lot 3 because of the floodplain, regardless of whether the Town allowed the elevation. He said he believed allowing that building on Lot 3 would contribute to the flooding concerns, because there would be less area for floodwaters to spread out.

Mr. Newton said he would like to see some effort on the part of the developer to address the concerns regarding the fence that were brought forward by the neighbors, particularly regarding a barrier.

Mr. Oliver said about Lot 3, he was concerned about the floodplain as well, noting that the parking lot was located in the floodplain as well. He said he did not have as much concern about Lots 1 and 2, but wished they were one lot. He said the fence was an issue of concern for him as well.

Mr. Remington said the neighbors had some obvious concerns that were not satisfied by the vegetation, but he was not an advocate of big walls. He said some of the issues that the neighbors had brought up were not compatible as well. He said there appeared to be a lot of room to develop a creative way to deal with the concerns raised by the neighbors, and do it in ways that were realistic.

Sheila Pierce, the applicant, clarified that they had brought back information at the Public Hearing to address the twelve points they were given, and with Ms. Hauth's help had answered every one of those items, including the TJCOG's report that addressed the CPTED in regards to this property. She said she believed a lot of new information had been provided. Mr. Newton asked had there been any modifications made to the plan. Ms. Pierce responded no. She said regarding the fence, they were open to engage in a conversation about what type of fence the neighbors might consider, taking into

CPTED's language about not putting in a wall. Ms. Pierce said they were not opposed to an opaque fence with good vegetation, but she had great concerns regarding the placement of a brick wall for many reasons. She said it would unfairly disturb the environment to construct it, particularly the placement of the footings. Ms. Pierce said it was cost prohibitive, and was not a long-term good idea when there were other alternatives. She reiterated that they were not opposed to putting in what might be considered a reasonable fence to accommodate not only the design to limit the view but to block access and provide some boundary for the neighbors.

Ms. Pierce said regarding Lot 3, if they were to enter into a conversation about eliminating the opportunity to build on Lot 3, she would ask that the Board consider the fact that she needed to somehow and recover some of the value of that Lot. She said she did not want the cost of the infrastructure to exceed the value of the lot. Ms. Pierce asked she would like to keep Lot 3 in such a way that she had some options for it. She suggested that the Town or the County might have interest in it for green space.

Ms. Pierce said she had spoken recently to the Triangle Land Conservatory to discuss the opportunity to donate property. She said there would be some tax credit in that it would allow her to recover some of the value of the property. Ms. Pierce said if they did decide to follow that path, she asked if it would be possible to move the property line to take in the entire creek and include it with the green space. She said she was open to discussing that.

Tony Whitaker, with Civil Consultants, Inc., stated that if this project were to be annexed and approved with the Master Plan, it would be fair to say in response to the question regarding the zoning that it was an Entranceway Special Use district with a specific Master Plan attached. He said if someone tried to carry out something other than the Master Plan with Special Use Permit, they would be in violation of the zoning.

Mr. Whitaker said regarding the impervious surface, it had been interpreted in past instances of this zoning district being approved that impervious surface transferred between lots, so that if one lot had less than the required 50% then impervious surface was considered comprehensively of all the lots involved and not lot by lot. Mr. Whitaker said that was their specific request for this application as well.

Mr. Farrelly said regarding the fence, what he wanted to see was the applicant making an effort to work with the neighbors to come up with something they could both live with, and if they could not then to come back and alert the Board about that.

Mr. Jones asked if Ms. Pierce had said a brick wall as suggested was not an option. Mr. Whitaker said it was their position that a brick wall was not a feasible option, and was not feasible from many sources and perspectives. He said the brick wall option as described by the neighbors, being mostly a continuous brick wall along the property line, was not on the table as an option because it was not an option they believed could be implemented and did not want to waste time talking about it. Mr. Whitaker said they did want to spend the time talking about what could be done.

Mr. Oliver agreed that the brick wall should not be an option, noting it was mostly for sound deadened and not to separate neighborhoods from this kind of development. He said it was more appropriate to separate a neighborhood from a street. Mr. Oliver said he would anxiously advise the neighborhood to think about alternatives and the opportunity they had to control what happened in that parking lot. He said if you had a fence such as a wrought iron fence that you could see through, but made it difficult for people to cross over into the neighborhood, then if someone was in the lot after hours they could alert the police.

Mr. Oliver noted that with an eight-foot brick wall, they would not be able to see what was happening in the lot. He said having a fence that you could see through provided for some Neighborhood Watch activities. Mr. Oliver added he did not believe there was a need for sound protection as much as there needed to be a clear delineation to keep people out of the neighborhood, and a wrought iron fence or something like it was more appropriate.

Mr. Whitaker stated they did have several ways to be creative about expanding the actual depth of that buffer without losing any development opportunities. Mr. Newton said he believed they were heading in the right direction, and knew Mr. Whitaker was very creative. He said he did not want to discuss this further, but rather he wanted to see what was planned. Mr. Jones said he was in favor of not developing Lot 3, and believed that some sort of fence would have to be constructed.

Ms. Pierce asked if there were any other major issues that needed to be addressed when this came back on September 5. Mr. Newton asked if any changes would require another public hearing. Ms. Hauth said if the changes were a reduction, it would not require another public hearing.

Mr. Newton said if they were to look seriously at an offer for the property from Orange County or the Town, would that cause problems for either of the two. Ms. Hauth said we did not have a pot of funds available in order to make an offer to purchase, but we could accept it as a donation for green space. Mr. Whitaker said under that scenario, Lot 3 would exist with stringent limitations on what it could be used for, but it would not have to be bought or committed to any anyone at the point of approval. He said it would be available for future disposition in a variety of ways, one of which could be purchase by a public entity. Ms. Pierce asked if there was any comment on her suggestion to move the lot line. Mr. Oliver asked Ms. Hauth if it were permissible through the current process to grant some sort of exception for impervious percentages if the applicant were to donate all of this property that took away their capability to meet some impervious percentage. He asked if the donation of the property allow them to have something like that. Ms. Hauth said it was possible to do that. Mr. Hornik said looking at the 11+ acres as a whole package and saying that 50% of that had to be impervious, the idea would be that later on if you exhausted your entire 50% on the first two lots then on the third lot you would have zero impervious surface, so there would have to be a limitation built in on that. He said if you used 48% of it on Lot 1, then that meant that on Lots 2 and 3 you had only 2%.

Margo Pinkerton asked to be allowed to speak, and Mr. Farrelly noted that this was not a public hearing and that much was already a part of the public record. He allowed her to speak for one minute.

Ms. Pinkerton said the CPTED report was presented from only one point of view, and she had contacted them and they admitted they had not realized a neighborhood was involved. She said because of that, the Board should ask for further clarification of that point of view. Ms. Pinkerton said if you had 50% impervious surfaces on the lots and it was placed on one lot, that was a huge percentage. She said there was an unmarked stream that was not indicated on the map.

ITEM #8: Recommendation to the Town Board regarding Churton Street Corridor Plan.
Postponed to the September meeting.

ITEM #9: Discussion of potential public planning event to develop concepts for the Daniel Boone and Collins properties.

Mr. Farrelly said he believed everyone had either heard or read about the news that the Daniel Boone property and Collins properties were on the market. Ms. Hauth stated that there were firms that we could hire to run a variety of public process to involve the boards, the property owner, or the public regarding what we might want to see on this property. She said that Clarion Associates was one such firm, and she wanted to give the Board the opportunity to offer suggestions about a scope and description and a proposal either for firms to respond to or for the Board to respond to.

Ms. Hauth said they hoped, ideally, to be able to host something in October or no later than November so that it would not negatively impact any timeframe that the potential property owners might have. She said it was her understanding that only the Daniel Boone Village portion of the site was on the market, but it appeared to her that it would be to our advantage to look at the entire piece with a broader view.

Mr. Newton stated that his initial reaction was that this site was a great opportunity. He said there had been a report done in 2001 regarding how much commercial development Hillsborough could handle. Today, he said, we have had many commercial properties approved but we had commercial spaces that were empty. He asked how much more commercial could we realistically support, and were we already beyond our saturation point. Mr. Newton said we wanted to be sure that new commercial property built would be filled with new businesses. Mr. Newton expressed concern about the length of time for any process. He said if we come up with a four-year process like we did with Waterstone, then all a developer had to say was they would not develop it. He said if we came up with a monstrous process, it might be overwhelming to a developer who wanted to redevelop the property. Mr. Newton said he really wanted to know where we were in our commercial capacity. He said it was likely that whatever happened at that location, there would be a good deal of commercial involved. He said the 2001 report said that Hillsborough could support two large box stores, but since then we had approved many other commercial sites. Mr. Newton said it would be worthwhile to have that question answered.

Ms. Hauth said she saw the event as a one-day event, and described how she envisioned that day would be scheduled, similar to a design charette. Mr. Newton asked if Clarion would be the company she would recommend. She said possibly, noting she had worked with them on a number of projects, but there were many firms that did this type of work. She said they would look into some of those firms, and would also contact Peter Bachelor at the School of Design at NC State.

Mr. Newton said Roger Waldon with Clarion had done an excellent job working with the Strategic Growth Planning Committee, but on the other hand it may be good to get some fresh perspectives. Ms. Hauth said she did not consider planners to be design professionals, and that was what we needed. Mr. Oliver said this was an incredible opportunity with incredible risk. He said we would all like to improve that property, but it could change the entire nature of Hillsborough because it would be the geographical center of the Town once Waterstone was completed. Mr. Oliver said if we did not have the right kind of development, we might end up with a Daniel Boone Village II.

Mr. Farrelly wondered if NC State or UNC's business schools might be willing to comment on our capacity for retail. He said he did not know who could get down to that level of forecasting, but it would be interested to find out. Mr. Farrelly said we could have something thrive in this location at the risk of causing others to fail elsewhere. Mr. Remington said one of the things in the Churton Street Corridor Plan concerned redevelopment potential, and this area was mentioned. Mr. Remington said his concern was that the thing that would kill the new urbanism, which he really liked, was the gentrification of the area, that is, the normal every-day businesses that we rely on would move away. Mr. Newton noted that some businesses would be lost with the redevelopment due to the difference in rents between the existing Daniel Boone spaces and new space. Mr. Oliver asked Ms. Hauth if our water plan covered any additional development in this area. Ms. Hauth said not in the model, but there was remaining capacity in the model to accommodate redevelopment on the Daniel Boone site. She said there was an allocation in the model for the Collins property.

Mr. Oliver asked who would be involved in that Saturday public planning process. Ms. Hauth said it would be open to anyone who wanted to participate. She said there would be plenty of press coverage to advertise the event. Ms. Hauth said when we hired a designer to facilitate the event, we would want to specify what the base knowledge necessary to inform that day was, and the market study would be one of those things so that there was some basis in reality.

ITEM #10: Adjourn.

MOTION: Mr. Oliver moved to adjourn the meeting.

SECOND: Mr. Newton.

VOTE: Unanimously approved. Mr. Farrelly adjourned the meeting at 8:31 p.m.

Respectfully submitted,

Margaret Hauth, Secretary